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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/541,986	04/03/2000	Shea Michael	EX-2DC4	4687

40283 7590 06/10/2005

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EXAMINER

RICHMAN, GLENN E

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

9A

Office Action Summary

Application No.

09/541,986

Applicant(s)

MICHAEL, SHEA

Examiner

Glenn Richman

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-87 is/are pending in the application.
- 4a) Of the above claim(s) 23, 24, 48, 57, 63, 75, 79, 84 and 87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-22, 25-47, 49-56, 58-62, 64-74, 76-78, 80-83, 85 and 86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/21/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims in the reply filed on 10/14/03 is acknowledged.

Claims 23-24, 48, 57, 63, 75, 79, 84 and 86 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species. Election was made **without** traverse in the reply filed on 10/14/03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-22, 25-29, 33-44, 46-47, 49-51, 53-56, 58-61, 64, 65, 67-72, 76-78, 80-83, 85 and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marci et al.

Marci et al disclose contacting a remote computer from the exercise apparatus in response to an input to the exercise apparatus (col. 3, lines 17-30).

As for the various species of exercise devices of claims 21, 22, 27, 28, and 33-36, they are all obvious variants of Marci et al, as it is well known to use the internet with any exercise device, and as Marci et al's device, lends itself for use with any device.

Marci et al do not specifically disclose receiving advertisements. However, Marci et al disclose using the internet while an exerciser exercises (col. 3, lines 17-30). It would therefore have been obvious to have received and displayed advertisements on Marci et al's device while a user exercises, as it is well known to receive advertisements on the internet.

As for claims 25-29, 33-44, Marci et al further disclose contacting a remote computer via a wired communication link (col. 3, lines 17-30), contacting a remote computer via a wireless communication link (col. 3, lines 17-30), generating exercise data relating to the exerciser's exercise on the exercise apparatus (claim 38, last par 6); and providing a display of information on a display device of the exercise apparatus while the exerciser exercises, the display comprising both the exercise data and the advertisements received from the contacted remote computer (claim 38, last par 6).

As for claim 44, Marci et al do not specifically detail the advertisements are displayed on a first portion of the display device and the method further comprises displaying exercise-related data on a second portion of the display device of the exercise apparatus while the exerciser exercises, however it would be obvious to be receiving exercise related data on the display, as well as advertisements, as Marci et al's device incorporates both the internet and exercising.

Claims 30-32, 45, 52, 62, 66, 73, 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marci et al in view of Lubell et al.

Marci et al do not specifically disclose the various exercise related data of claims 30-32.

Lubell et al disclose the exercise related data of claim 17 (col. 2, lines 66- et seq., col. 6, lines 28 – et seq.).

It would have been obvious to display the exercise related data as disclosed by Lubell et al on Marci et al's display, as it is well known as taught by Marci et al to display the exercise data, to give an exerciser related feedback.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stark et al disclose an instrumented orthopedic restraining device and method of use.

Fisslinger discloses an interactive computer assisted multi-media biofeedback system.

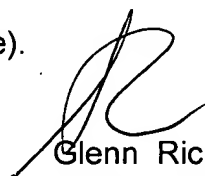
Geeslin et al disclose an automated cognitive rehabilitation system and method for treating brain injured patients.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Glenn Richman
Primary Examiner
Art Unit 3764